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Order 97-12-7

Served: December 10, 1997

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 5th day of December, 1997

Suspension of Cargo Air Operations Between
the United States and Sudan

Docket OST-3204

ORDER TO SHOW CAUSE

By Executive Order 13067, issued November 3, 1997, the President has determined that a national emergency exists and that the policies and actions of the Government of Sudan constitute an unusual and extraordinary threat to the national security and foreign policy of the United States. In that executive order, the President ordered the imposition of various sanctions against Sudan, and directed all U.S. government agencies "to take all appropriate measures within their authority to carry out the provisions" of the executive order.¹ The sanctions include a suspension of air cargo operations between the United States and Sudan, so that the following are prohibited:

- (1) Any transaction by a United States person relating to transportation of cargo to or from Sudan;
- (2) The provision of transportation of cargo to or from the United States by any Sudanese person or any vessel or aircraft of Sudanese registration; and
- (3) The sale in the United States by any person holding authority under subtitle 7 of title 49, United States Code, of any transportation of cargo by air that includes any stop in Sudan.²

¹ Exec. Order 13,067, § 5, 62 Fed. Reg. 59989 (1997).

² *Id.*, § 2(f).

The Executive Order was published in the Federal Register of November 5, 1997.

In light of the President's actions, we tentatively find that the public interest requires the regulatory prohibition of cargo air service, and all transactions related to cargo aviation, between the United States and Sudan.

We therefore propose to add the following conditions to all U.S. air carrier certificates, all section 402 permits held by foreign air carriers, and all exemptions held by U.S. and foreign air carriers, which conditions would apply to indirect as well as direct air carriers:

Effective immediately, and until further order of the Department, the holder and its agents:

(a) shall not sell in the United States any transportation of cargo by air that includes a stop in Sudan, and

(b) may not engage in foreign air transportation of cargo to or from the United States with any aircraft of Sudanese registry.

In addition, we propose to add the following condition to the certificate and exemption authority of all U.S. air carriers (direct and indirect):

Effective immediately, and until further order of the Department, the holder and its agents may not engage in any transaction relating to air transportation of cargo to or from Sudan.

We also propose to add the following condition to the permits and exemption authority of all foreign air carriers (direct and indirect):

Effective immediately, and until further order of the Department, the holder and its agents may not engage in any transaction in the United States relating to air transportation of cargo to or from Sudan.

Our proposed action is designed to prohibit transactions relating to air transportation of cargo to the greatest extent possible. It would prohibit any air carrier or foreign air carrier from engaging in air transportation between the United States and Sudan using aircraft of Sudanese registry. It would prohibit the issuance in the United States of any air waybill that includes a stop in Sudan, regardless of whether the flight in question serves the United States. U.S. air carriers would also be prohibited from selling any transportation of cargo to or from Sudan anywhere in the world.

We appreciate that this proposed action could create hardships for shippers, and could deprive carriers and agents of revenues. Nevertheless, we tentatively find that the safety of international civil aviation and our national security and foreign policy concerns override these considerations.

Under 49 U.S.C. § 41110(a)(2)(A), the Secretary may amend, modify, or suspend any certificate if required by the public convenience and necessity. 40 U.S.C. § 41109(a)(2)(A) allows the Secretary to prescribe terms for providing air transportation under certificates. 49 U.S.C. § 41304 allows the Secretary to amend, modify, suspend, or revoke a foreign air carrier permit if he finds it in the public interest. In view of the national security and safety circumstances discussed above, we tentatively find that these actions are required by both the public interest and the public convenience and necessity.

ACCORDINGLY,

1. We direct all interested persons to show cause why the tentative decision set forth above should not be made final;
2. Comments in response to this order shall be filed with the Department no later than five days from the date of service of this order, and served on the persons named in paragraph 4;
3. In the event no comments are filed, all further procedural steps shall be deemed waived, and the Department shall enter an order, subject to the disapproval of the President pursuant to 49 U.S.C. § 41307, that shall make final our tentative findings and conclusions set forth in this order;³ and
4. We will serve this order on all U.S. and foreign air carriers holding certificates of public convenience and necessity, foreign air carrier permits, or exemption authority; the Air Transport Association; the National Air Carrier Association; the International Air Transport Association; the Air Freight Association; the Ambassador of Sudan in Washington, D.C.; and the United States Department of State.

³ Since provision is being made for the filing of comments on this order, petitions for reconsideration will not be entertained.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for
Aviation and International Affairs

(SEAL)

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